

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

SAMUEL MENDEZ,

Plaintiff,

vs.

FILED ELECTRONICALLY

CIV. ACTION NO. 1:05-cv-00035

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, PRISON HEALTH
SERVICES, INC., DR. MARK
BAKER, DR. FRAIDER,

Defendants.

**MOTION TO COMPEL COMPLIANCE WITH SUBPOENA AND FOR
CONTEMPT SANCTIONS**

Now comes Defendant Dr. Mark Baker, by and through his attorneys, Samuel H. Foreman, Esquire and the law firm of Weber Gallagher Simpson Stapleton Fires & Newby, LLP and, pursuant to Rules 37 and 45 of the Federal Rules of Civil Procedure, files the following Motion to Compel Compliance with Subpoena and for Contempt Sanctions. In support thereof, they respectfully represent to the Court as follows:

1. This instant suit was initiated by a Complaint filed on or about January 28, 2005. Plaintiff is currently a prisoner, incarcerated at the Mercer County State Regional Correctional Facility, who claims he injured his right arm

and right shoulder on March 20, 2003 while moving rugs in the medical department of SCI-Albion.

2. On or about October 10, 2005, this Defendant served Hamot Medical Center with a subpoena requesting a complete copy of any and all medical records pertaining to Mr. Mendez. A copy of the subpoena and letter serving same are attached hereto as Exhibit A and B respectively.

3. On or about October 12, 2005, this Defendant received a letter from Hamot Medical Center stating that they needed a signed authorization from the patient. A copy of their letter is attached hereto as Exhibit C.

4. On or about October 18, 2005, this Defendant sent a letter to Hamot Medical Center stating that pursuant to 45 C.F.R. § 164.512 a signed authorization is not needed to obtain Mr. Mendez's medical records. A copy of the letter is attached hereto as Exhibit D.

5. On or about October 21, 2005, this Defendant received a letter from Hamot Medical Center stating that they needed a signature of a court official or court seal on subpoena and an attestation that written notice was sent to the patient whose records we were attempting to obtain. A copy of their letter is attached hereto as Exhibit E.

6. On or about October 26, 2005, this Defendant sent a letter to Hamot Medical Center stating that a Certificate of Service was included with the original

subpoena attesting to the fact that Mr. Mendez was provided with written notice and that under the Federal Rules of Civil Procedure, an attorney, as officer of the Court, is empowered to issue subpoenas as an officer of the Court. A copy of this letter is attached hereto as Exhibit F.

7. To date, Hamot Medical Center has not produced the subpoenaed medical records.

8. The information sought by the Defendant from this subpoena is essential to the preparation of the defense in this matter.

9. This Defendant has been prejudiced in his ability to proceed with discovery in this matter due to the failure of Hamot Medical Center in providing the documents requested.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter an Order compelling Hamot Medical Center to comply with aforementioned subpoenas and hold Hamot Medical Center in contempt of court for failure to comply.

Respectfully submitted,

WEBER GALLAGHER SIMPSON STAPLETON
FIRES & NEWBY LLP

BY: /s/ Samuel H. Foreman
Samuel H. Foreman, Esquire
sforeman@wglaw.com
PA77096

WEBER GALLAGHER SIMPSON
STAPLETON FIRES & NEWBY, LLP
2 Gateway Center
Suite 1450
Pittsburgh, PA 15222
(412) 281-4541
(412) 281-4547 FAX

CERTIFICATE OF SERVICE

I, Samuel H. Foreman, Esquire, hereby certify that on this date a true and correct copy of the foregoing **MOTION TO COMPEL COMPLIANCE WITH SUBPOENA AND FOR CONTEMPT SANCTIONS** was sent by first class United States mail, postage prepaid, to the following:

Samuel Mendez, CY7322
SRCF Mercer/HA/9-2
801 Butler Pike
Mercer, PA 16137

Elizabeth M. Yanelli, Esquire
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219;

Rodney Torbic, Esquire
Office of the Attorney General
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

/S/ Samuel H. Foreman
Samuel H. Foreman, Esquire

Dated: 11/22/2005